



DNREC Virtual Public Hearing

Phase II Tier II MS4 General Permit

NPDES Permit Number: DE 0051217

(Docket #2022-P-W-0017)

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National Pollutant Discharge
Elimination System (NPDES)
Municipal Separate Storm Sewer
System (MS4)

Phase II Tier II General Permit



Department of Natural Resources and Environmental
Control

Division of Water

Commercial and Government Services Section

Photo by Da

What is an MS4?

- Municipal Separate Storm Sewer System
- A water conveyance or system of conveyances owned by a municipality or public entity that discharges into waters of the state that:
 - Discharges stormwater into waters of the state
 - Is NOT a combined sewer
 - Is NOT part of a Publicly Owned Treatment Works



Delaware NPDES MS4 Program

Current Permits

- (1) Phase I MS4 Permit
 - NCC/DelDOT with co-permittees:
 - Cities of New Castle, Wilmington, Delaware City, and Towns of Bellefonte, Newport, Elsmere
- (4) Phase II MS4 Permits
 - City of Newark (2003)
 - Town of Middletown (2013)
 - City of Dover (2003)
 - DelDOT(Kent County) (2003)



Delaware NPDES MS4 Program Phase II Tier II

- Under the new General Permit
 - Smyrna
 - Camden
 - Laurel
 - Seaford
- Under 2010 Census, fourteen new MS4s were identified, 10 were waived

If the public entity is not identified but is located on the Urbanized Area Map (US Census Bureau) they will still need to submit an NOI





NPDES History

- **Phase I (1990)**

- Regulates discharges from large and medium MS4s and construction activity ≥ 5 acres
 - Large MS4 = population $>250,000$
 - Medium MS4 = population $>100,000$ but $<250,000$
 - Individual Permits

- **Phase II (1998)**

- Regulates discharges from small MS4s and construction activity ≥ 1 acre
 - Small MS4 = not designated as Large or Medium and located in **urbanized area** according to latest census data
 - If a small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated
 - General Permits

How is a Small MS4 Designated ?

- **Automatic Nationwide Designation-** located in the boundaries of an “urbanized area” as defined by the Bureau of the Census. It can never be removed from the program but is eligible for a waiver if it meets the criteria.
- **Potential Designation** by the NPDES Permitting Authority-**Evaluation** Required, The Phase II Final rule required a set of designation criteria to be developed.
 - Discharge to sensitive waters
 - High population density
 - High growth or growth potential
 - Contiguity to a UA
 - Significant contributor to pollutants to waters of the United States; and
 - Ineffective protection of water quality concerns by other programs

Petition to the NPDES permitting authority

 - Physically Interconnected

Urbanized Areas

- Represent densely developed territory, and encompass residential, commercial, and other non-residential urban land uses.
- Delineated after each decennial census by applying specified criteria to census and other data
- Two types:
 - Urban Areas (UAs) of 50,000 or more people
 - Urban Clusters (UCs) of at least 2,500 and less than 50,000
- “Rural” encompasses all population, housing, and territory not included within an urban area
- *There will only be “urban areas” see below for links, this goes into effect March 2, 2023*

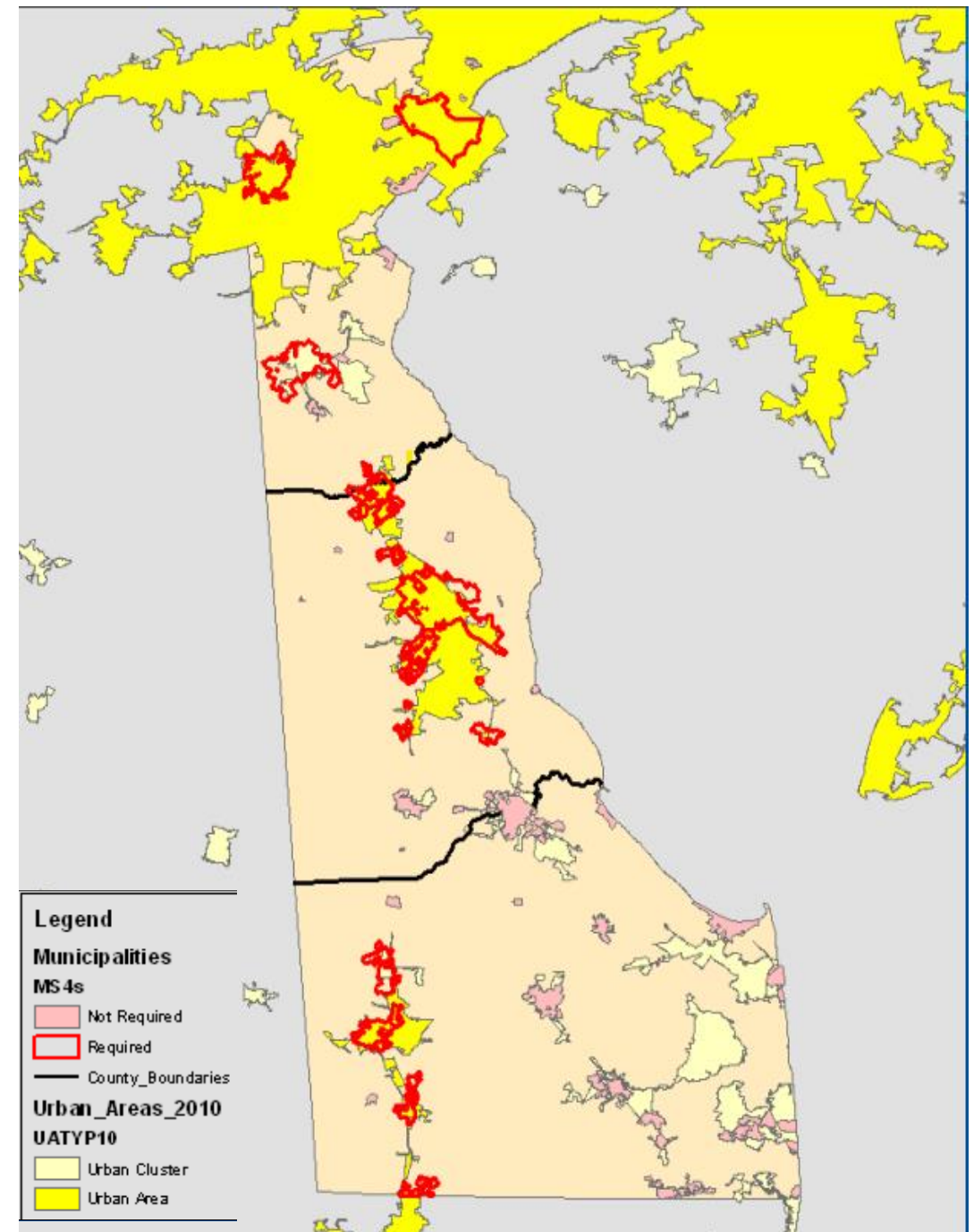
Phase II Rule Clarification Related to Census Bureau Urban Area Designation Criteria [Phase II Rule Clarification Related to Census Bureau Urban Area Designation Criteria | US EPA](#)

Direct Final Rule Federal Register Notice Effective March 2, 2023

[2022-26228.pdf \(govinfo.gov\)](#)

Census Bureau list of Urban Areas 2020 Census

[2022-28286.pdf \(govinfo.gov\)](#)



Regulatory Overview

- **Clean Water Act – NPDES Program**
 - US 40 CFR: National Pollutant Discharge and Elimination Program
 - MS4 permit requirements at 40 CFR 122.26
- **Title 7 – Delaware Administrative Code**
 - Section 7201 – Regulations Governing the Control of Water Pollution
 - 7201 Section 6.0 – Administration of the NPDES Program
 - 5101 – Sediment and Stormwater Regulations
 - 7401 – Surface Water Quality Standards

What is a General Permit?

- Provides NPDES permit coverage to a category/class of discharges that are similar in nature
- One permit → Many permittees
- Still allows for co-permittee relationships
- As with an individual permit, it is only current for 5 years

State of Delaware NPDES Phase II MS4 General Permit

- Draft Tier I General Permit
 - Coverage for those identified as a small MS4 and currently maintain coverage under an individual Phase II MS4 permit
- Draft Tier II General Permit
 - MS4s not currently discharging pursuant to a NPDES MS4 Permit issued by the Department
 - Permittees that obtain coverage under the Tier II permit will submit a Notice of Intent for a Tier I permit after the first permit cycle
 - Waiver Criteria

Documentation

- Notice of Intent (NOI)
- Tier II General Permit requires MS4 operators to control storm water discharges through BMPs, including development and implementation of a comprehensive storm water management program (SWMP) as summarized in SWMP Plan
- Follow the annual report requirements within the MS4 permit
 - Demonstrate continual progress toward program goals and shall demonstrate full implementation by the end of the five-year period
 - eReporting
 - To be submitted to the Department by **July 1st** of each year

DE NPDES Phase II MS4 General Permit Tier II Components

- Authorizes new regulated small MS4s located within the State of Delaware to discharge storm water into water bodies of the State
 - Part I – Coverage under this Permit
 - Part II – Storm Water Management Program Plan
 - Minimum Control Measures
 1. Public Education and Outreach
 2. Public Involvement and Participation
 3. Illicit Discharge Detection and Elimination (IDDE)
 4. Construction Site Storm Water Runoff Control
 5. Post Construction Storm Water Management
 6. Pollution Prevention and Good Housekeeping
 - Part III – Program Evaluation and Assessment, Recordkeeping, Reporting, and Program Review
 - Part IV – Standard Permit Conditions
 - Part V – Definitions
 - Appendix A SWMP Milestone
 - Appendix B Designation Criteria
 - Appendix C Waiver Program

Part I - Notice of Intent (NOI) Process

- The operator must submit a Notice of Intent (NOI) for coverage to the Department **within 60 days** after the effective date of this General Permit
- The NOI must include:
 - The name of the discharging entity
 - The operator responsible for the management of the MS4 program
 - Descriptive information about the waters to which the MS4 drains
 - Names of all known waters that receive a discharge from the MS4
 - The designated use
 - The impairment status of each of these water bodies
- Future NOI submittals may be required to be executed **electronically**. Upon written notification from the Department all permittees and co-permittees must transition to eNOI in lieu of hardcopy submittals

Part I – Stormwater Management and Water Quality

- Storm Water Management Program Plan (40 CFR Part 122.34(a))
- **Requirements:**
 - Reduce pollutants to the maximum extent practicable into the MS4
 - Effectively reduce pollutants in storm water discharges or other unauthorized discharges into the MS4 to achieve Delaware's Surface Water Quality Standards
 - Must include a list of all waters that receive a discharge from the MS4 including the following:
 - The number of outfalls discharging to each waterbody
 - Designated uses of each waterbody
 - Whether the receiving water bodies are listed in the latest State of DE Combined Watershed Assessment Report (305(b)) and the Clean Water Act Section 303(d) Waters Needing TMDLs
 - TMDL status; relevant and probable source of pollutants/stressors; summary of control strategies or watershed plans; description of permittee's potential sources of relevant pollutants; thorough description of BMPs that can be taken to reduce release; estimate of costs to implement BMPs and implementation schedule

Part II – Stormwater Management Program

General Requirements

- After Department approval of the NOI, permittee will have 6 months from permit effective date to develop an initial SWMP plan
- The final SWMP plan shall be submitted within 12 months of the permit effective date
- The permittee shall develop a strategy to meet its measurable goals and implementation of MCMs
- The plan will span the entire term of the permit and be reviewed and updated as needed
- Municipalities have the option to be co-permittees through a Memorandum of Understanding (MOU) or other legally binding agreement

1. Public Education and Outreach

To comply with this MCM, the permittee shall:

Within 90 days of the permit effective date, establish or update a process by which the public can report water quality complaints that must include a 24-hr hotline phone number

Determine target audiences within the MS4 jurisdiction and develop materials to educate the audiences on the impact of storm water pollution

Within 1 year of the effective date, conduct **one** educational event that may include distributing educational materials describing impacts of storm water pollutant discharges on water bodies and methods of reducing storm water pollution

Within 6 months of effective date, develop and implement annual employee training program that addresses topics to prevent or reduce the discharge of stormwater pollution into the MS4

Describe in annual reports how the education programs compliment and strengthen other requirements



2. Public Involvement and Participation

To comply with this MCM, the permittee shall:

Develop, implement, and maintain written public involvement and participation program which promotes and provides participation activities available to community and describes the methods on encouraging the public's involvement and input

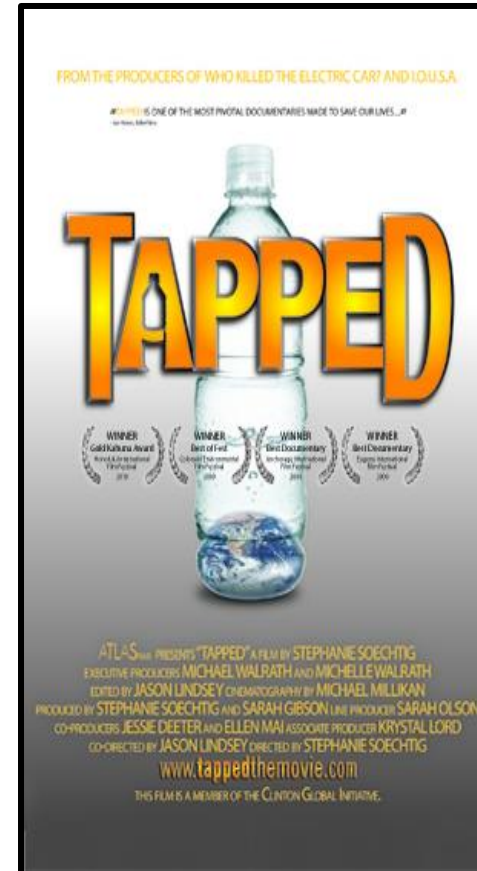
Determine target audiences within the MS4 jurisdiction to promote public involvement and participation activities

Specify activities appropriate for each target audience group and promote participation through the permittee's website, print media, etc.

Comply with all State and federal public notice requirements

Within 1 year of the effective date, perform **two** public participation activities submit summary of the activity and number of participants in the annual report

Provide public access to the permittee's MS4 annual reports on a website or by request



3. Illicit Discharge Detection and Elimination (IDDE)

To comply with this MCM, the permittee shall:

Within 2 years of effective date, develop and maintain the map(s) of regulated MS4 that identifies all storm water conveyances, outfalls, storm water management structures, and waters of the State that receive storm water discharges from the MS4

Within 1 year of effective date, maintain an ordinance or other regulatory means to implement and enforce a program that includes the prohibition of non-storm water discharges to the MS4



3. Illicit Discharge Detection and Elimination (IDDE)

- Develop, maintain, and enforce a written Illicit Discharge Detection and Elimination (IDDE) program:
 - **Within 2 years** of effective date, procedures for identifying priority areas that have higher likelihood of illicit discharges, illicit connections, or illegal dumping
 - Develop written dry weather field outfall screening program to assist in detecting and eliminating illicit discharges
 - Starting in the **1st year** of the effective date, conduct dry weather field screening for 20% of different outfalls each year;
 - Establish system for identifying source of an illicit discharge when contaminated flow is detected at an outfall and establish procedures for eliminating an illicit discharge
 - Legal mechanism for gaining access to private properties to inspect outfalls and investigate illicit connections or discharges
 - Record all outfall inspections including flows observed, results of screening and testing, follow up investigations, and corrective actions taken to eliminate illicit discharges

3. Illicit Discharge Detection and Elimination (IDDE)

- Establish a system for addressing public reporting of illicit discharges or other related complaints and procedures to inform employees, businesses, and the general public of the hazards associated with illegal discharges and improper waste disposal
- **Within 90 days** of the permit effective date, permittee shall develop procedures to recognize and report any sanitary sewer overflows (SSO) or leaking on-site sewage disposal systems that discharge into the small MS4 and submit those procedures to the Department for review and approval
 - For any SSO that enters the MS4 that has the potential to impact the MS4, a written report shall be provided to the Department's Surface Water Discharges Section **within five days** of the release
 - Description of discharge, estimate of the amounts discharged, and the cause of non-compliance
 - The period of noncompliance, including dates and times and if it has not been corrected, the anticipated time when the discharge will be eliminated
 - Actions taken or to be taken to reduce, eliminate, and prevent reoccurrence of the noncompliant discharge

4. Construction Site Storm Water Runoff Control

To comply with this MCM, the permittee shall develop, maintain, and enforce a program that includes requirements for:

Review and approval of Sediment and Stormwater Plans to ensure compliance with standards in the Delaware Sediment and Stormwater Management Regulations and Special Conditions for Storm Water Discharges Associated with Construction Activities

Use and maintenance of appropriate structural and nonstructural sediment and erosion controls and other BMPs to reduce polluted discharges to the MS4 during the time when construction is underway

Inspection and enforcement of sediment and erosion controls and BMPs during construction to ensure that polluted runoff from the construction site is not occurring during active construction, and enforce if necessary

Construction site operators to control wastes such as discarded construction or building materials, concrete truck washout, chemicals, litter, oil, and sanitation waste in consideration of potential water quality impacts

*The permittee may fulfill this requirement through a cooperative agreement with a Delegated Agency in accordance with Delaware Administrative Code 5101, Sediment and Stormwater Regulations. Submit copy of cooperative agreement to the Department within 1 year of the permit effective date.



4. Construction Site Storm Water Runoff Control

- Ensure adequate training of site contractors in accordance with the current Delaware Sediment and Stormwater Regulations (DE Admin Code 5101) and Special Conditions for Storm Water Discharges Associated with Construction Activities
- Inspection to ensure that BMPs are properly constructed and installed
- Validation that the Delegated Agency is performing these actions appropriately throughout the MS4 jurisdiction in accordance with the cooperative agreement
- Development and adoption of an ordinance or other regulatory mechanism for enforcing compliance with this section **within 2 years** of effective date
- Procedures for receipt and consideration of information submitted by the public

4. Construction Site Storm Water Runoff Control

The permittee shall report the following associated with this MCM in the annual report:

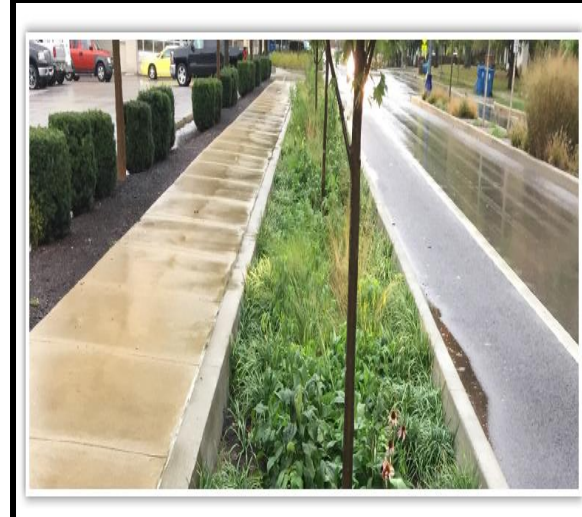
- Number of Sediment and Stormwater Management Plans reviewed
- Number and type of actions that resulted in compliance
- Percent of active construction sites inspected once
- Percent of active construction sites inspected more than once
- Percent of active construction sites with Sediment and Stormwater Management Plans located on-site
- Number of construction sites authorized for disturbances of one acre or more
- Summarize CCR training records including topic of training, date and hours of training and names of trainees
- Effectiveness of the program and assessment of E&S BMP procedures

5. Post Construction Storm Water Management

To comply with this MCM, the permittee shall develop, maintain, and enforce a program that:

- Procedure to address any amendments to applicable State and federal regulations that may become effective during permit term
- Conducts annual visual inspections of all stormwater management systems owned and maintained by the permittee and develop a maintenance program to prioritize repairs.
- Identifies and map all stormwater management systems which may discharge to the MS4 and each year conduct a visual inspection of at least 10% of these stormwater management systems to ensure proper function.
- **Within 3 years** of effective date, develop a program to address post-construction runoff from new development and redevelopment projects to ensure adequate long-term operation and maintenance of stormwater management systems
- Ensures staff is appropriately trained in proper BMP design, performance, inspection, and routine maintenance

***The permittee may fulfill this requirement through a cooperative agreement with a Delegated Agency in accordance with Delaware Administrative Code 5101, Sediment and Stormwater Regulations.**



6. Pollution Prevention and Good Housekeeping

To comply with this MCM, the permittee shall:

- Ensure appropriate staff and contractors receive training **at least** annually. The training must be designed to reduce or eliminate the discharge of pollutants during municipal operations
- **Within 2 years** of permit effective date, develop a good housekeeping plan for permittee owned or operated properties that could contribute to the discharge of pollutants from the MS4
 - A description of site activities
 - A list of potential pollutants, including their sources and locations on the site
 - Written good housekeeping procedures designed to prevent the discharge of pollutants off site, that includes regular visual inspections
 - Written procedures for corrective actions to address any release, spill, or leak on site
 - Documentation of any discharge, release, leak, or spill, including date, findings, and response actions



6. Pollution Prevention and Good Housekeeping

- **Within 3 years** of effective date, quantify and report pollution prevention efforts related to the following activities:
 - Permittees that own, operate, or maintain roads shall develop a street sweeping program which shall be described within the SWMP.
 - If the permittee's MS4 contains catch basins, the permittee shall maintain a catch basin program that provides for routine cleaning and maintenance.
- **Within 3 years** of effective date, develop a standard operating procedure for:
 - Proper pesticide/herbicide application, storage, and disposal such as integrated pest management plans or alternative techniques
 - Fertilizer application such as chemical storage, landscaping with low maintenance/native species, and application procedures
 - Snow and ice control such as use of pretreatment, truck calibration and storage, and salt dome storage and containment
 - Litter control and floatables that could enter the MS4
- Submit a list of properties owned and operated by the Permittee that are covered under the State of DE's NPDES General Permit for Storm Water Discharges Associated with Industrial Activities
- Consider incorporating runoff reduction techniques and green infrastructure in the routine upgrade of existing stormwater conveyance systems and municipal properties.

Permit Requirements

- Part III – Program Evaluation and Assessment, Recordkeeping, Reporting, and Program Review
- Part IV – Standard Permit Conditions
 - C. Alternative Compliance Clause
- Part V – Definitions
 - Appendix A SWMP Milestone
 - Appendix B Designation Criteria
 - Appendix C Waiver Program

Alternative Compliance Clause

Non municipal permittees who do not have the authority or ability to fulfill all permit requirements may request alternative protocols for compliance with those specified elements, such as a cooperative agreement with other agencies. Such requests should be made in writing to the Surface Water Discharges Section, Richardson and Robbins Building, 89 Kings Highway, Dover DE 19901. The department will review the request and provide a written determination of exemptions and/or alternative compliance arrangements within 30 days.

Delaware MS4 Designation Criteria

- **Criteria One:** The entity has had an increase in population density (at a rate above 20 %), a high growth rate (population or town boundaries) exhibited in the last three years, and/or a high growth potential for the next three years. Similarly, the entity has a seasonal population increase of over 30% entering and staying within the jurisdiction during the peak vacationing months of the year (May-Sept).
- **Criteria Two:** The entity is a significant contributor of pollutants to waters of the State and/or is exhibiting ineffective protection of water quality.
- **Criteria Three:** The entity is discharging to waters of the State that have an EPA-approved Total Maximum Daily Load (TMDL) which calls for a reduction of pollutants associated with stormwater beyond what can be achieved with existing programs (and the area is not already covered under automatic designation).
- **Criteria Four:** The entity is discharging to the State of Delaware's Waters of Exceptional Recreational and Ecologically Sensitive (ERES) waters.
- **Criteria Five:** The entity is contiguous to an automatically designated urbanized area (town boundaries) that discharges to sensitive waters classified by either an EPA-approved TMDL plan or ERES waters.
- **Criteria Six:** The entity has impervious surface coverage that exceeds a certain percentage (35% for urban areas, 15% for residential developments, or 5% for rural areas) of the entity's total area within its jurisdictional boundaries and stormwater pollution is not being controlled by other existing CWA programs. For this criterion, impervious surface is defined by 7 DE Admin. Code 7201 §9.1.

Designation Criteria Determination

In conjunction with federal regulations, the Department reserves the right to designate any entity as a regulated MS4 based on the criteria listed above. If an entity meets at least three of the criteria the entity will be designated as a regulated MS4. If an entity meets less than 3 of the criteria, the Department will determine whether the entity will be regulated as an MS4 and required to obtain an NPDES permit.

Waiver Process

- In accordance with the Clean Water Act, MS4s are required to obtain a discharge permit unless they are granted a waiver by the NPDES permitting authority (the Department) under 40 CFR § 122.32 (c), (d) or (e). Under the Stormwater Phase II Final Rule, the Department may waive permit coverage of a MS4 if it serves a population below a certain number, the MS4 is not contributing substantially to the pollutant loadings and storm water controls are not needed based on waste load allocations that are part of a TMDL
- Waiver Criteria looks at population, thresholds of nutrients and bacteria, ERES waters, new/post construction standards, centralized wastewater treatment



Contact Info

Gordan Woodrow, Program Manager

Gordon.Woodrow@Delaware.gov

Alexis Capes, Environmental Scientist III

Alexis.Capes@Delaware.gov

Gavin Ferris, Environmental Scientist II

Gavin.Ferris@Delaware.gov

Commercial and Government Services Section

(302) 739-9946

Public Hearing Exhibits

DNREC Exhibits:

- Exhibit 1: Draft MS4 Phase II Tier II General Permit and Fact Sheet as revised as of Dec. 14, 2022
- Exhibit 2: Draft MS4 Phase II Tier II General Permit and Fact Sheet as published June 8, 2022
- Exhibit 3: MS4 NOI Form and MS4 Waiver Form
- Exhibit 4: Public Hearing Legal Notice as published on the DNREC website and in the Delaware State News and the News Journal on Dec. 14, 2022
- Exhibit 5: Hearing Notice Posting on the State Public Meeting Calendar on Dec. 21, 2022
- Exhibit 6: Public Hearing Webpage
- Exhibit 7: Court Reporter Confirmation
- Exhibit 8: Public Hearing Requests
- Exhibit 9: Copies of emails sent to entities that requested a Public Hearing and emails sent to public entities
- Exhibit 10: DNREC MS4 Phase II Tier II PowerPoint Presentation
- Exhibit 11: DNREC Exhibits Index



DNREC Virtual Public Hearing

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Thank you for joining us. We will accept comments on this matter through February 23, 2023. Comments may be submitted in writing via **DNREC Comment form-** <https://dnrec.alpha.delaware.gov/public-hearings/comment-form/> via email-DNRECHearingComments@Delaware.gov

or by USPS mail:

Lisa Vest, Hearing Officer

DNREC- Office of the Secretary

89 Kings Highway, Dover, DE 19901

The full verbatim transcript will be posted when it becomes available.

For more information, find the event page for this hearing on the DNREC Public Hearings page

<https://dnrec.alpha.delaware.gov/public-hearings/>